

UNITED STATES OF AMERICA

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

Petition for A)

Microbroadcasting)

Docket No. RM-9208

Service)

REQUEST FOR AN EXTENSION OF THE PUBLIC COMMENT PERIOD BY
THE RM-9208 PETITIONERS: NICKOLAUS E. LEGGETT, JUDITH F.
LEGGETT AND ATTORNEY DONALD J. SCHELLHARDT

REQUEST FOR A COMMENT PERIOD EXTENSION

1. We, the undersigned Petitioners, request an extension of the public comment period in Docket No. RM-9208. We ask the Commission to extend the deadline for public comments from 30 days after the date of issuance (the apparent current deadline of Friday March 6, 1998) to 90 days after the date of publication in the Federal Register (sometime after Friday May 22, 1998).

Simultaneously, in a separate filing made today, we have submitted our substantive written comments in Docket No. RM-9208. If the requested comment period extension is granted by the Commission, we will use the additional time to discuss various policy issues with other parties who support licensing of microstations but differ with us on some of the details. It is our hope that these discussions, building upon discussions which have already occurred, would lead to an expansion of the current points of consensus among the many advocates of microbroadcasting -- and/or to a clearer delineation of the differences in our individual approaches to our common goals.

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Such developments, should they occur, could be brought to the Commission's attention through Additional Comments, filed by ourselves -- and almost certainly others! -- before the new comment deadline expires. Further, even if such developments do not occur, Additional Comments could be filed in order to communicate insights gained, and conclusions reached, through the further study of competing microbroadcasting proposals under less harried conditions.

Expanded points of consensus -- and/or Additional Comments which reflect substantially more study, reflection and dialogue -- would surely benefit the Commission and its staff as much as they would benefit the commenting parties (and potentially commenting parties).

REQUEST FOR A CONSOLIDATION OF COMMENT OPPORTUNITIES

2. As a related matter, we also request the Commission to solicit public comments on all of the recent microbroadcasting Petitions within the framework of Docket No. RM-9208. That is, instead of having a 30-day comment period on the Leggett/Schellhardt Petition, followed by a 30-day comment period on the Skinner Petition, followed by a 30-day comment period on another Petition, etc., etc., we ask the Commission to proceed with ONE 90-day comment period, in ONE Docket, covering ALL of the different proposals.

Such a consolidation of comments would avoid unnecessary multiplication of effort, expenses and paper. It would also reduce the overall time frame required for Commission action (and reduce simultaneously the possibility of procedural confusion!).

The commenting parties would clearly benefit from such a consolidation of comments, but the consolidation would also simplify action on microbroadcasting for the Commission and its staff.

As the Commission knows, the Leggett/Schellhardt Petition would gain no special advantage under this arrangement (other than having the honor, as the first Petition filed, of providing the "flagship" Docket Number for the fleet of microbroadcasting proposals). This would be a Win/Win decision by the Commission: all concerned, including the Commission itself, would reap the benefits of faster Commission action under less complicated and burdensome conditions.

REQUEST FOR FEDERAL REGISTER NOTICE OF COMMENT OPPORTUNITIES

3. Finally, we ask the Commission to publish the following, immediately, in the Federal Register:

(a) notice of our Petition, which triggered the creation of Docket No. RM-9208 on February 5, 1998 (but which has STILL not been announced in the Federal Register, as of the edition of February 23, 1998);

(b) simultaneous notice of all other microbroadcasting Petitions received by the Commission between the date of issuance of RM-9208 and the notice of an extended comment period;

(c) an announcement of the 90-day comment period extension in Docket RM-9208, including the specific date by which comments are due;

(d) an announcement that all of the Petitions referenced above -- that is, our own Petition on microbroadcasting plus those filed after ours -- will be considered during the single 90-day comment period for the single Docket of RM-9208;
and

(e) inclusion, with these Federal Register notices, of the full text of our Petition and the full text of all other Petitions which were filed between the date of issuance of RM-9208 and the notice of an extended comment period.

THE FACTUAL SITUATION WHICH TRIGGERED OUR REQUESTS

On Thursday February 5, 1998, the Commission authorized issuance of a Notice soliciting public comments on our Petition for a Notice of Proposed Rulemaking (dated June 26, 1997 and entered into Commission records on July 7, 1997). In that Petition, we asked the Commission to initiate a proposed rule to establish licensing of microbroadcasting radio stations.

The Commission assigned RM-9208 as the Docket Number for this matter and posted notice of the proceeding on the

Commission's Internet Web Site. However, as we mentioned earlier, there has still been no notice published in the Federal Register (nor, to the best of our knowledge, in any other medium). To put the point more precisely, no notice has been published in the Federal Register as of the February 23, 1998 edition: the most recent edition that has been received in the mail, as of this writing, at the libraries we checked.

We note for the record that less than one-fifth of the U.S. population currently has Internet capability.

We further note for the record that February 23, 1998 is 18 days after the date of issuance of the Commission's solicitation of public comments. It is also less than 12 days before the Commission's presumed comment deadline.

We refer to a "presumed comment deadline" because the Commission's Web Site notice does not provide a specific date by which are comments are due in RM-9028. The Web Site notice states that "Interested persons may file statements opposing or supporting the Petition for Rulemaking listed herein within 30 days." The Notice does not indicate, however, whether this deadline is 30 days from the date of issuance (that is, February 5, 1998) or 30 days from the date of publication in the Federal Register (which has still not occurred). Using the first standard, the comment deadline is Sunday, March 8, 1998.

Leggett/Schellhardt
Comment Period Extension Request
Page SIX

So we have to guess again. Assuming the Commission is not open to receive written comments on a Sunday, must comments be filed by Friday March 6 -- a shaving of 2 days off the 30 which were theoretically provided -- or may commenters file on Monday March 9? Since the Commission's notice does not indicate a specific date, caution requires us to presume a March 6 deadline -- even though the Commission may have intended us to have 3 more days.

As an additional complication, the Commission's Web Site notice -- that is, the only notice provided so far -- did not provide the full text, or even a partial text, of our Petition. Judging by the desperate calls we received from reporters and microbroadcasting advocates, anxiously seeking the text of our Petition so that they could understand the proposal on which the Commission had solicited public comments, the omission of the text of our Petition caused massive confusion (and even a few flashes of paranoia).

We later learned (although it was not stated in the Web Site notice) that copies of our Petition could be purchased from the Commission for \$50.00 a copy. Perhaps this charge of \$50.00 for an 11-page document is Standard Operating Procedure. If so, however, the Commission is systematically maintaining a sizable barrier to participation in Commission decision-making by the very citizens it is supposed to serve.

The text of our Petition was finally posted on the Internet. It was posted by a microbroadcasting advocate -- who carefully transcribed all 11 pages. It was not posted by a member of the Commission or a member of its staff.

The Internet posting was made on February 17, 1998. This was when the comment period really began for most of the broadcasting community: 12 days after the "official" starting date of February 5 (and 17 days before the March 6 deadline).

Our own comment period began, for all practical purposes, on February 12, 1988, when all of us received phone calls from a trade press reporter. As the Petitioners whose filing was the catalyst for RM-9208, we had received no notification from the Commission -- either formally or informally -- that the Commission was considering action on our proposal. Nor had we received notification from the Commission -- either formally or informally -- that action had in fact been taken.

Those microbroadcasting supporters who cannot access the Internet STILL may not know.

THE LEGAL BASIS FOR OUR REQUESTS

The notification procedures employed by the Commission might have been adequate (marginally) for those parties who:

(a) have established and maintained a Washington office, and/or retained a Washington law firm, and/or paid dues to a well-financed association, enabling them and/or their agents

to monitor Commission activities on a routine basis and to establish formal or informal liaison with decision-makers at the Commission;

and

(b) have the knowledge and sophistication to know where and how to obtain a copy of the Petition from the Commission;

and

(c) have the financial resources to shrug at the thought of paying the Commission \$50.00 for a copy of a Petition that is 11 pages long.

These criteria can be met by many large corporations and some large non-profit organizations. These criteria cannot be met by most small businesses, most small non-profits or virtually any private citizens.

Surely, they cannot be met by most of the citizens who dream of licensing a 1-watt or 10-watt or 50-watt microstation!

We realize that the Commission is overworked, under-staffed and, perhaps, under-budgeted. Nevertheless, the notification problems we have noted -- failure to clearly indicate the specific comment deadline in the Web Site notice, failure to include the text of our Petition in the Web Site notice, failure to publish a notice in the Federal Register at all and a \$50.00 fee for citizen access to an 11-page public document -- can all be corrected without unduly burdening the Commission's staff.

More importantly, Commission action to correct these problems is legally necessary.

The notification problems we have noted have effectively reduced the theoretically available comment period by several days or more -- in the case of those who finally obtained the information they needed in order to participate intelligently in this proceeding. For the vast majority of American citizens, and even for the majority of American businesses and non-profits, there has been no meaningful notification at all.

The Federal Register does not reach everyone either, but it reaches people who are not reached by the Commission's Web Site. Further, even readers of the Commission's Web Site are not really reached if they are deterred from participation by having to pay \$50.00 for a copy of the Petition they have been invited to evaluate.

We believe these problems are serious enough to constitute a violation of the public notice requirements of the Federal Communications Act and the Administrative Procedures Act.

Indeed, we believe these problems constitute a violation of the United States Constitution.

We believe that the Commission must take corrective action in order to restore "due process of law", and "equal protection of the laws", for all Americans with an interest in this Docket.

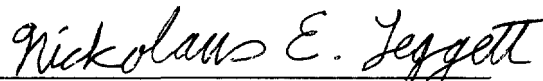
Being "business as usual" doesn't make something legal.

Leggett/Schellhardt
Comment Period Extension Request
Page TEN

CONCLUSION

For reasons both practical and Constitutional, we urge the Commission to act favorably on our requests for an extension of the comment period, consolidation of comment opportunities into a single 90-day comment period for Docket No. RM-9208 and immediate publication of various notices (and the text of various microbroadcasting Petitions, including our own) in the Federal Register.

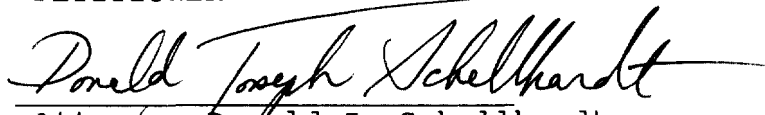
Respectfully submitted,



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Leggett/Schellhardt
Comment Period Extension Request
Page ELEVEN

Dated: March 4, 1998

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